IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 2044 OF 2001
(Old No. 60 of 1989)

1. Khim Singh S/o Bachhi Singh
2. Trilok Singh S/o Khim Singh

R/o Vill.Hisni, P.S. Pithoragarh, Distt. Pithoragarh

..... Appellant

Versus

The State .....Respondent

Dated: October 24, 2007

Sri Deepak Sharma holding brief of Sri Ramji Srivastava, learned counsel for the appellant
Sri Harish Pujari, learned Addl. GA for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 *(hereinafter to be referred as Cr.P.C.),* is directed against the judgment and order dated 23.12.1988 passed by Sessions Judge, Pithoragarh in Sessions Trial No. 33 of 1987, whereby the learned Sessions Judge has convicted the appellants under Section 307 r/w 34 of Indian Penal Code, 1860 *(hereinafter to be referred as I.P.C.)* and sentenced both of them for three years R.I. and fine of Rs. 1,000/- to each of the appellants and in default of payment of fine, six months further S.I. was awarded. However, accused Smt. Debu Devi was acquitted by learned Sessions Judge for the charge punishable u/s 307 r/w 34 IPC.

2. CJM Pithoragarh vide his report dated 21.8.2003 has reported that appellant Khim Singh has died on 21.5.1998, hence appeal against appellant No.1- Khim Singh stands abated.

3. In brief, the prosecution case is that on 11.08.1986 at about 9:00 A.M. in Village Nisni, Tok Palkot, Distt. Pithoragarh appellants- Khim Singh and Trilok Singh along with accused Smt. Debu Devi had caused injuries by *Bariath* and *Lathis* to Chandra Singh and Prem Singh. After the incident, injured Chandra Singh and Prem Singh were taken to District Hospital, Pithoragarh by Laxman Singh with the help of villagers. With the same averments, Sri Laxman Singh moved an application before Naib Tehsildar, Pithoragarh. On that application, Naib Tehsildar passed an order to Patwari on the

same day i.e. on 11.8.1986 at 6:00 P.M. for registration of the case u/s 307 IPC, that report is Ex.Ka-3. On the basis of this report, Patwari has prepared the Chik FIR, that is Ex.Ka-6. (In rural hilly areas of Uttarakhand, the Patwaris are being vested with Police Powers.) After that injured Prem Singh was medically examined by Medical Officer (Emergency) B.D. Pandey Hospital, Pithoragarh on 11.8.1986 at 5:00 P.M., his injury report is Ex.Ka-2. On the same day i.e. on 11.8.1986 at 5:30 P.M. injured Chandra Singh was medically examined by Medical Officer (Emergency) B.D. Pandey Hospital, Pithoragarh, his injury report is Ex.Ka-1. During the course of investigation, the I.O./ Patwari inspected the place of occurrence and has taken blood stained clothes (shirt and trouser) of injured Chandra Singh and prepared a Fard, i.e. Ex.Ka-4. The Patwari also taken the blood stained clothes (open shirt and underwear) of injured Prem Singh and prepared a Fard, i.e. Ex.Ka-5. He has also prepared the site plan of the place of occurrence i.e. Ex.Ka-7. After completing the investigation, the Patwari/I.O. has submitted the charge sheet against the appellants Khim Singh, Trilok Singh and co-accused Smt. Debu Devi (who was acquitted by the trial court) u/s 307 IPC in the court of Munsif Magistrate, Pithoragarh on 16.12.1986, that charge sheet is Ex.Ka-8.

4. Learned Munsif Magistrate, Pithoragarh has committed the case to the court of Sessions on 23.11.1987 under section 209 Cr.P.C. after complying with the provisions of Section 207 Cr.P.C.

5. On 19.01.1988, Sessions Judge, Pithoragarh framed the charge against the appellants Khim Singh, Trilok Singh and co-accused Smt. Debu Devi u/s 307 r/w 34 of IPC. The charge was read over and explained to the appellants and accused who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined P.W.1 Dr. R.P. Bhatt, who has medically examined the injured persons, P.W.2 Diwan Singh, eye witness, P.W.3 Laxman Singh

Who is the complainant and eyewitness of the case, P.W.4 Chandra Singh, injured witness, P.W.5 Prem Singh, injured witness and P.W.6 Gyan Singh Saun, Patwari/I.O. of the case.

7. Thereafter, the statements of the appellants Khim Singh, Trilok Singh and co-accused Smt. Debu Devi were recorded u/s 313 of Cr.P.C. who have denied the allegations made against him. They had not produced any oral evidence but in the documentary evidence, the injury report of appellant-Khim Singh was produced, i.e. Ex.Kha-1.

8. After appreciating the evidence on record and after hearing learned counsel for the parties, the learned Sessions Judge, Pithoragarh vide his judgment and order dated 23.12.1988 convicted the appellants-Khim Singh and Trilok Singh under Section 307 r/w 34 of IPC and sentenced both of them for three years R.I. and fine of Rs. 1,000/- to each of the appellants and in default of payment of fine, six months further S.I. was awarded. However, co-accused Smt. Debu Devi was acquitted by learned Sessions Judge for the charge punishable u/s 307 r/w 34 IPC. Against the said judgment and other dated 23.12.1988, the appellants have filed present appeal before this Court.

9. I have heard Sri Deepak Sharma holding brief of Sri Ramji Srivastava, learned counsel for the appellants and Sri Harish Pujari, learned Addl. G.A. for the State and perused the entire material available on record.

10. To prove its case, the prosecution has examined P.W.1 Dr. R.P. Bhatt who has stated in his statement that on 11.8.1986 he was posted as Emergency Medical Officer in District Hospital, Pithoragarh. On that day at 5:30 P.M. Chandra Singh was medically examined by him and he found following injury on his body:-

> *"Incised wound on top of left scalp sizing 4 cm x 0.4 cm x scalp deep vertically placed making a flap of skin as the wound is obliquely placed at this position towards left side. Wound bleeds on cleaning. Margins of wound are clean, sharp and well defined and retracted externally."*

The doctor has also stated that injury was simple in nature and could be caused by any sharp and hard object. At the time of examination, injures were within 6-12 hours old and an injury report was also prepared by him, i.e. Ex.Ka-1. He further stated that the injury could possibly be caused by a Bariath (big sickle) on 11.8.1986 at 9:00 A.M.

On the same day, injured Prem Singh was also medically examined by him at 5:00 P.M. and he found following injuries on his body:-

A. Lacerated wound size 3.5 x 1.5 cm x scalp deep, bone visible, periosteum involved in wound, at left forehead 5 cm above the eyebrow. Bleeding present on cleaning. Margins irregular, ovalish in shape.

B. Lacerated wound size 1.5x0.5 cm. on left side of head 9 cm. above the left eyebrow, vertical in shape, scalp deep.

C. Lacerated wound of size 3.5 cm x 1.5 cm vertical in shape, scalp deep on left side of head, 5 cm. away from left ear. Margins irregular.

D. Contuded swelling of nose involving whole of nose in an area of 5 cm x 3.5 cm. Bleeding present from left nostril.

The doctor has further stated that injuries are possible by hard blunt object (*Kundala)* and the injuries at the time of medical examination were 6-12 hours old and x-ray was advised. The injuries could possibly be caused on 11.8.1986 at 9:00 A.M. He has also prepared the injury report of injured Prem Singh, i.e. Ex.Ka-2.

In cross-examination in para 9 he has stated that injuries of Prem Singh could be caused by falling repeatedly on some blunt object and in para 10 he has stated that the injuries on both the injured persons could also he caused on 11.8.1986 between 5-6 A.M. and these injuries also could be caused on the same day between 11 A.M. to 12 P.M.

11. P.W.2 Diwan Singh who was said to be eyewitness was also examined. He has not supported the prosecution case and was declared hostile. He has stated in his statement that he has not seen any incident and he also had not seen appellants/accused persons while causing injuries to injured persons.

12. P.W.3 is Laxman Singh who has stated in his statement that appellants-Khim Singh his son Trilok Singh and

his wife Devki Devi were known to him and they all belonged to his village. The incident was said to be taken place on 11.8.1986 at 9:00 A.M. He was in his house and he heard the noise of his nephew Prem Singh and he ran towards the side from where the noise came. Then he saw in Palkot Tok that appellant Khima Singh was causing injury to Chandra Singh with *Bariath* and appellant Trilok Singh was causing injury to Prem Singh with *Bariath.* He ran from that place towards the place of occurrence while screaming upon them not to do like so. On the way he heard that accused Devki was saying to kill them (injured persons and Devki was about 10 steps away from the appellants. When he reached on the place of occurrence then Khim Singh, Trilok Singh and Smt. Devki ran away from there and appellants/accused had also taken *Bariaths* with them. After sometime Diwan Singh also reached on the place of occurrence and Hira Devi and Neela Devi also reached there. Then Prem Singh and Chandra Singh were taken to their houses and from their they were taken to Ghat which is 7 Kms. away from the place of occurrence and from there by bus they had gone Pithoragarh. There both the injured persons were sent to Pithoragarh Hospital and they were medically examined. After that he has lodged the FIR to Naib Tehsildar, i.e. Ex.Ka-3. The statement of this witness was not believable by learned Sessions Judge as from the statement of this witness, it reveals that he was not a natural witness and he could not be present on the spot.

13. P.W.4 is Chandra Singh who has stated in his statement that the appellants Khim Singh and Trilok Singh and accused Smt. Devki Devi were Known to him and they all belonged to his village. The incident took place on 11.8.1986 and on the date of incident, he was working in his field in Palkot Tok and was sowing crop of *Gahat* and *Udad* and his son Prem Singh was also working along with him in the field. The time was about 9:00 A.M. when all the accused persons came into the field where they were working. Khim Singh and Trilok Singh were armed with *Bariyaths* and accused Devki Devi was

armed with sickle (Daranti). Khim Singh had asked them that why they had come in the field and after saying this Trilok Singh attacked on Prem Singh and Khim Singh attacked on him (Chandra Singh) with *Bariyath.* He has also stated that at the time of incident when he pushed Khem Singh then Khem Singh also received the injury with *Bariyath.* After hearing the noise Laxman Singh, his brother also reached on the place of occurrence and after that Diwan Singh also reached there. Thereafter Neela Devi and Heera Devi reached on the place of occurrence. Accused Devki Devi had stated the appellants to kill them (injured persons) and she also pelted stones. Then both of them (Chandra Singh and Prem Singh) were taken by Laxman Singh, Heera Devi and Neela Devi to their residence and thereafter they were taken to Ghat which is 7 kms. away from their residence and from Ghat they were taken to Pithoragarh. In Pithoragarh they were medically examined in the hospital and Prem Singh was admitted in the hospital and thereafter Laxman Singh was sent for lodging the report. He has also stated that his blood stained shirt and trouser was taken by the Patwari and sealed on the spot and a Fard was also prepared, i.e. Ex.Ka-4. The blood stained shirt and underwear of his son (Prem Singh) was also taken by the Patwari in his possession and they were sealed on the spot and a Fard was also prepared i.e. Ex.Ka-5. In cross-examination in para 11 he has stated that appellant Khim Singh also came to Pithoragarh from Ghat by bus and he remained admitted in the hospital for two days. In para 12 he has stated that he and Prem Singh had not received any injury by *Lathi.* He has also stated that at the time of occurrence, the appellants/accused were not armed with any *Lathi.*

14. P.W.5 is Prem Singh who has stated that appellants Khim Singh, Trilok Singh and accused Devki Devi were known to him and they all belonged to his village. He has stated that on 11.8.1986 at 9:00 A.M. in Palkot Tok, he was sowing *Gahat* and *Udad* in his field along with his father Chandra Singh. Meanwhile appellants and accused Smt. Devki Devi reached on

the place of occurrence and **they all were armed with *Bariyaths.*** Khim Singh had asked why they had come in their fields (Khim Singh field) and then Khim Singh had caused injury to his father Chandra Singh and Trilok Singh had caused injury to him with *Bariyath.* He has also stated that his father Chandra Singh had pushed Khim Singh due to which Khem Singh has received injury of *Bariyath.* He further stated that Trilok Singh had attached thrice on him with *Bariyath* and Smt. Devki Devi was saying to kill him and Devki Devi also pelted stones on him. In para 14 of his cross-examination he has stated that at the time of incident on the place of occurrence, three accused persons, he and his father were there and except them nobody else was there.

15. P.W.6 is Gyan Singh Saun who is the Patwari and investigated the case has stated that on 13.8.1986 he was posted as Patwari in Gorana. He has received the report Ex.Ka-3 and on the basis of this report he has prepared Chik FIR i.e. Ex.Ka-6 on the basis of which he has started the investigation. During the course of investigation, he has recorded the statements of injured persons and other witnesses. He also taken the blood stained clothes of injured Chandra Singh and Prem Singh and sealed them in separate bundles and prepared Fards, those Fards are Ex.Ka-4 and Ex.Ka-5 and the blood stained clothes were admitted in the Maalkhana. He has prepared the site plan of the place of occurrence i.e. Ex.Ka-7. After completing the investigation, he has submitted the charge sheet in the court i.e. Ex.Ka-8. In para 6 of the statement of his cross-examination, he has stated that the possession of the land in dispute was transferred by him on 19.4.1986 to Khim Singh from Chandra Singh and about that land proceedings u/s 145 Cr.P.C. were decided in favour of Khim Singh and as per the order of SDM, on 19.4.1986 he has transferred the possession of land to Khim Singh from Chandra Singh. (;g ?kVukLFky okyh tehu ogh g ft l d ckj e Qjhdu d chp 145 dk e|dnek pyk FkkA 145 d Qly e [khe flg d gd e Qlyk gvk Fkk vkj S.D.M. d Qly d e|rkfcd eu 19-4-1986 dk ekd ij tkdj tehu dk dCtk pUnflg l yd j [khe flg

dk fnyk fn;k FkkA). In para 7 he has also stated that he has not received any report about the disputed land that Chandra Singh was ever remain in possession over the land in dispute. (bl >xMs okyh tehu dh ckj esa ejs ikl dHkh fjikVZ ugh vkbZ fd pUnz flag dk ble dHkh dCtk jgkA)

16. After that the statement of the appellants Khim Singh, Trilok Singh and accused Smt. Devki Devi were recorded u/s 313 Cr.P.C. who have denied the allegations made against them. Appellant Khim Singh stated in his statement that his son Trilok Singh was not at home on the date of incident and he had gone in his in-laws house to take his wife from there. Chandra Singh has caused injury on his head by Lathi and Heera Devi has caused injury on his ear and Prem Singh has caused injury to him with *Lathi* on his both thighs and Neela Devi was asking his accomplice to kill him (Khim Singh). He further stated that the land in dispute was in his possession and the possession was transferred to him by Patwari on 19.4.1986. In two fields he had sown maize crop and in rest of 7-8 fields he had sown *Madira* and maize was ripe up. On the date of incident, he had gone to his field on cut maize crop. Prem Singh and Heera Devi also reached there and asked them that they will not allow him to take the maize. Then he had told them that he had won the case and Patwari has transferred the possession to him and they had sown the crop and the harvesting and ploughing of crop was also done by him. Then Prem Singh stopped in pelting stones and called his father and on that Chandra Singh reached there being armed with Lathi and Leela Devi also reached there being armed with a sickle. Then Chandra Singh has caused injury to him with Lathi and Heera Devi caused injury on his ear by sickle and Prem Singh caused injury by Lathi to him on his thights. After that wife of Khim Singh took him to his house.

17. Learned counsel for the appellant argued that in the FIR it was averted that all the accused persons were armed with *Bariyaths* and *Lathis* but in the statements of P.W.4 Chandra Singh and P.W.5 Prem Singh, it has been stated that

Khim Singh had caused injury to Chandra Singh with *Bariyath* and Trilok Singh and caused injury to Prem Singh with *Bariyath.* It was also stated in the statement of P.W.4 Chandra Singh that none of the accused persons had Lathis in their hands P.W.5 Prem Singh has stated in his statement that Smt. Devki Devi was armed with *Bariyath* however in the statement of P.W.4 Chandra Singh, it has been stated that Smt. Devki Devi was armed with a sickle. On the basis of this statement, learned counsel for the appellant submitted that the prosecution story seems to be doubtful and it is not proved beyond reasonable doubt.

18. Learned counsel for the appellant further submitted that it has come in the statement of P.W.4 Chandra Singh and P.W.5 Prem Singh that the injury with *Bariyath* was caused by Khim Singh to Chandra Singh and Trilok Singh has caused injury to Prem Singh and now Khim Singh has died and appeal against him stands abated. He further submitted as per the allegations made against appellant Trilok Singh, Trilok Singh has caused injury to Prem Singh by *Bariyath* and it is also admitted that the Bariyath is a sharp edged weapon and there is no incise wound of *Bariyath* on the person of Prem Singh as Prem Singh has received only the lacerated of wounds and contusion and that could not be caused by *Bariyath,* hence the presence of appellant Trilok Singh on the place of spot is doubtful. He further submitted that by the injury of Bariyath, only incise wound is possible which has been found on the body of Chandra Singh which was caused by Khim Singh and now Khim Singh has died.

19. After perusal of the statement of injured witnesses Chandra Singh P.W.4 and Prem Singh P.W.5 and the injury report as well as statement of P.W.1 Dr. R.P. Bhatt, it is well established that the injuries caused to Prem Singh by appellant Trilok Singh is shown by Bariyath. It is further established that there is no incised wound on the body of Prem Singh and there are only three lacerated wounds and one contusion on the body of Prem Singh and the opinion of P.W.1 Dr. R.P. Bhatt, these

injuries could be possible by hard blunt object, hence, from the evidence of injured persons, it is also proved that the injury on the person of P.W.5 Prem Singh is not by *Bariyath* and due to this reason the presence of appellant Trilok Singh is doubtful on the spot. As discussed above, the injury caused to Prem Singh is not caused by *Bariyath,* therefore, the injury shown to be caused by appellant Trilok Singh to P.W.5 Prem Singh with *Bariyath* creates a doubt in the prosecution case as well as the presence of Trilok Singh on the spot also.

20. Learned counsel for the appellant further submitted that Khim Singh was in his field and his son had gone to his in-laws house and he has received possession of the disputed land by the order of SDM in the proceedings u/s 145 Cr.P.C. which was decided in favour of Khim Singh and Patwari had transferred the possession to him on 19.4.1986 as the Patwari has stated in para 6 of his statement quoted above. Hence, it proves that the land in dispute belongs to appellant Khim Singh (deceased) and Khim Singh was in possession as per court's order and possession was transferred to him by Patwari as per the order of SDM and he had sown the crop of maize and the injured Prem Singh and Chandra Singh had tried to take the possession forcibly and tried to damage his crop due to which incident took place and P.W.4 Chandra Singh had also caused injury to appellant Khim Singh (now deceased).

21. From the circumstances and evidence discussed above, it is also proved that the possession of the disputed land was transferred to Khim Singh by the Patwari on 19.4.1986 as per the order of SDM as case u/s 145 Cr.P.C. was decided in favour of Khim Singh by SDM concerned and he was doing the work in his field and cutting the crop of maize and the complainant had tried to take possession and also tried to damage the crop. When Khim Singh was resisting for saving his land and crop then complainant Prem Singh P.W.5 and Chandra Singh P.W.4 along with Neela Devi and Heera Devi have caused injuries to Khim Singh. This also creates a doubt in the prosecution case. The learned Sessions Judge has also

not relied on the statement of P.W.2 Diwan Singh and P.W.3 Laxman Singh and he has convicted the appellants on the basis of statement of P.W.4 Chandra Singh and P.W.5 Prem Singh and as discussed above, the statement of Chandra Singh and as Prem Singh do not inspire any confidence, hence the conviction of the appellant cannot be sustained.

22. For the reasons as discussed above, I am not in agreement with the judgment and order dated 23.12.1988 passed by Sessions Judge, Pithoragarh convicting the appellant Trilok Singh for an offence punishable u/s 307 r/w 34 IPC in the above said case and the prosecution has also failed to prove its case beyond reasonable doubt against the appellant Trilok Singh.

23. Though, the injuries on the person of Chandra Singh is proved by the prosecution which were shown to be caused by Khim Singh and the presence of Khim Singh on the spot seems to be natural. However, Khim Singh has died on 21.5.1998 as per the report of CJM, Pithoragarh dated 21.8.2003.

24. For the reasons discussed above, the appeal of appellant Trilok Singh is allowed. The judgment and order dated 23.12.1988 passed by Sessions Judge, Pithoragarh convicting the appellant Trilok Singh for an offence punishable u/s 307 r/w 34 IPC and sentencing him for 3 years R.I. and imposing fine of Rs. 1,000/- is hereby set aside. The appellant is on bail. He needs not surrender and his sureties are hereby discharged.

25. CJM Pithoragarh vide his report dated 21.8.2003 has reported that appellant Khim Singh has died on 21.5.1998, hence appeal against appellant No.1- Khim Singh stands abated.

(Dharam Veer, J.)

Rajeev Dang